

DETAILED ACTION

This is an examiner's amendment. Claims 1-4, 6-20, 32-42 are pending. Claims 5 and 17-31 are cancelled. Claims 3, 4, 10, 15, 16, 33-35, 37, 40 and 42 are to be rejoined.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with K. Roberts on 5 May 2008.

The application has been amended as follows:

Claim 1: line 1, delete "for"

line 8, delete "and", add in a new paragraph --an edging board having a rectangular cross section in the vertical direction and being received in said first channel; and--

line 18, after "the open ends of the edging board channel" add --whereby upon installation of the stake and edging board the hammer cap is removed to expose the edging board--

Claim 11: line 2 amend "second channels form an edging board channel" to "second channels form the edging board channel"

Claim 32: line 3 delete "and", add in a new paragraph --an edging board having a rectangular cross section in the vertical direction and being received in said first recess; and--

line 11 after "open-ended channel" add --whereby upon installation of the stake and edging board the hammer cap is removed to expose the edging board.--

Claim 36: line 1, delete "for receiving and installing" add --receiving--

line 1, after "A stake" add --and hammer cap--

line 9, after "landscape edging board;" delete "and", add in a new paragraph --an edging board having a rectangular cross section in the vertical direction and being received in said first channel; and--

line 15, amend "extending" to --extend--

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line 16 after "open ends of the board channel"
add --whereby upon installation of the stake and edging board
the hammer cap is removed to expose the edging board--.

Claims 1-4, 6-16, 32-42 are allowed.

Cancel claims 17-20.

The following is an examiner's statement of reasons for allowance: the prior art of record fails to disclose, teach or suggest the combination of the stake system, edging board and hammer cap where the edging board is received in a channel of the stake member; the hammer cap has a channel that combines with the stake to form an open-ended channel (or recess) where the edging board extends freely out through the open ends of the open-ended channel; and the functional language of the intended use of the hammer cap in combination with the stake and edging board with the limitations as claimed as it is to be removed when the edging board and stake are in an installed position.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 1, 2, 6, 8, 9, 11-14, 32, 36, 38 and 39 are allowable. The restriction requirement among, as set forth in the Office action mailed on 12 February 2007, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 3, 4, 10, 15, 16, 33-35, 37, 40 and 42, directed to a variant species of the combination of the stake, edging board and hammer cap, are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, claims 17-21, directed to a stake member, are to be cancelled from consideration because the claims require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

For an edging system:

Matz (U.S. Patent No. 5,857,493)

Morrison (U.S. Patent No. 4,195,809)

Russo (U.S. Patent No. 3,891,189)

Allen (U.S. Publication 2002/0104260)

Kontz (U.S. Patent No. 4,823,521)

Tappan (U.S. Patent No. 4,508,319)

Myer (U.S. Patent No. 1,945,784)

Moylan (U.S. Patent No. 761,979)

Humphrey (U.S. Patent No. 6,854,945)

For a hammer cap:

Bowers (U.S. Patent No. 5,097,912)

Harding (U.S. Patent No. 5,256,006)

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/
Supervisory Patent
Examiner, Art Unit 3635

/W. V. G./
Examiner, Art Unit 3635